

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JOHN S. MIGUEL

v.

A.T. WALL

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C.A. No. 15-281ML

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Before this Court for a report and recommendation (28 U.S.C. § 636(b)(1)(B)) is Plaintiff's second pro se Application to Proceed Without Payment of Fees and Affidavit. (Document No. 21). Plaintiff previously filed a pro se Application to Proceed Without Payment of Fees and Affidavit (Document No. 18) which the Court recommended be DENIED both for failure to comply with Fed. R. App. P. 24(a)(1) and because his proposed appeal is meritless. (Document No. 19). Subsequently, Plaintiff filed additional documents, including a certified copy of his Inmate Account and a document setting forth the issues he seeks to appeal. (Document Nos. 21-2, 22). Plaintiff's Inmate Account Statement indicates that as of February 1, 2016, he had an available spending balance of \$1,228.40 and an encumbered balance of \$1,000. The documents filed by Plaintiff fulfill the requirements of Fed. R. App. P. 24(a)(1). Nevertheless, Plaintiff is still barred from pursuing his appeal in forma pauperis because his appeal is without merit for the reasons outlined in my previous Report and Recommendation. (Document No. 19).

In brief, Plaintiff's right to appeal in forma pauperis is governed by 28 U.S.C. § 1915 which provides that, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). Plaintiff is seeking to appeal the denial of a

second or successive 28 U.S.C. § 2254 Petition which this Court does not have jurisdiction to consider, absent authorization from the Court of Appeals. 28 U.S.C. § 2244(b)(3)(A); See also Rule 9 of the Rules Governing § 2254 cases. Because it is undisputable that the District Court does not have jurisdiction over his Petition (Document No. 12), his proposed appeal is plainly frivolous and thus not taken in good faith. Accordingly, I recommend that the District Court DENY his second Motion to Appeal in forma pauperis. (Document No. 21).

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
March 2, 2016